

Other than rentals to certain diplomatic personnel, there is no exemption from Hotel Operator's Occupation Tax simply because the rentor is a tax exempt or nonprofit organization, such as a church, charity or school or even unit of government, including the U.S. Government. See 86 Ill. Adm. Code 480.101. (This is a PLR.)

June 25, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letters of December 28, 2000, April 17, 2001, and our latest telephone conversation on June 11, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA, a division of ZZZ for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA, a division of ZZZ nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Please accept this letter as a request for a Private Letter Ruling pursuant to Illinois Administrative Code §1200.110. The AAA, a division of ZZZ requests the ruling to determine: (A) whether the Municipal Tax Compliance Act definition of 'hotel' exempts ZZZ because it is a private university, and (B) whether the Illinois Hotel Operator's Occupation Tax should be collected and paid by ZZZ under the circumstances described below:

1. Complete Statement of the Facts and other Pertinent Information.

a) Identification of Interested Parties

The interested parties are the AAA, a division of ZZZ, and ZZZ.

(b) Business Reasons for the Transaction

The AAA offers short courses during the summer months. The courses are offered to be both stand-alone courses, and as part of a series of courses under a variety of circumstances. Certificates for completion of certain classes are issued by the AAA. Participants in certain other courses are eligible for professional or licensure credits as documented by ZZZ, but granted by a state or professional organization. The classes

are scheduled for a period of days or a weekend, not by semester. Students stay on campus in dormitories for the duration of the courses.

Due to the non-uniform nature of summer rentals at an academic institution, AAA can envision many different circumstances or combinations of circumstances under which it will be renting rooms to individuals during the summer months between traditional academic semesters. ZZZ can distinguish between probable fact scenarios in four different ways, namely a) type of organization b) credit or program c) method of payment and d) residence hall rooms versus campus apartment units. What follows is further description of each of these distinctions:

a) Type of organization

AAA anticipates renting units to entities which are:

- i) for-profit,
- (ii) not-for-profit,
- (iii) not-for-profit with tax exempt certification, and
- (iv) governmental.

b) Credit or program

AAA anticipates such rentals will be in conjunction with:

- (i) instruction following which continuing education units are granted by the state with ZZZ serving as the 'provider'. In order to be a 'provider', ZZZ is required to pay a fee to the Illinois Department of Professional Regulation and submit a detailed outline of the instruction given, (ii) instruction following which an organization grants certification or other privileges or status on the basis of this completion,
- (iii) instruction or training used for professional development,
- (iv) ZZZ students who are registered in summer school,
- (v) ZZZ students who are not registered in summer school at the time, but are otherwise involved in on-campus employment or activity related to education or professional development,
- (vi) instruction or non-instructive activities for which no credit or academic program is given, and
- (vii) summer camps for youth, including those for athletics, music, writing or other activities

c) Method of payment

AAA anticipates renting units in the following situations:

- (i) with a contract between AAA and an organization, whereby one check is written for lodging to AAA,

- (ii) with a contract between AAA and an organization, whereby one check is written for all services in a package including lodging, meals and instruction, without enumeration of charges for each,
 - (iii) with individual housing contracts and payments from each individual resident for lodging,
 - (iv) with individual contracts and payments from each individual resident for all services in a package including lodging, meals and instruction without enumeration of charges for each,
 - (v) to students enrolled in classes at ZZZ for the semester immediately preceding or immediately following the summer stay, who remain for the summer due to on-campus work, study, performances or other such campus involvement, and
 - (vi) allowing some groups or individuals to remain in campus housing free of charge
- d) Residence hall rooms versus campus apartment units
- (i) Some rentals will be of traditional residence hall dorm rooms.
 - (ii) Other rentals will be of apartments, in apartments owned by a private entity, and which are built upon real estate which ZZZ owns.

Please construe each of the above scenarios and combinations of scenarios in relation to the requirements to pay the taxes at issue.

In addition, please address whether distinctions can or should be made between rental to individuals for 30 days or more and rental to an organization for 30 days or more, regardless of (or without knowledge of) whether the same individuals will occupy the unit for at least 30 days.

(c) Analysis of the Material Facts

(i) The Municipal Tax Compliance Act

The definition of hotel under the Municipal Tax Compliance Act specifically includes dormitories, student unions, and student centers owned, leased or operated by public institutions of higher education. 65 ILCS 80/4(b). ZZZ is a private, not a public university. In *Northwestern University v. City of Evanston*, Northwestern University successfully challenged Evanston's hotel-motel tax by arguing that it did not operate its educational facilities to compete for the same clientele as hotels and motels, and that the 3% use by the general public did not disqualify it from the hotel-motel tax exemption. 221 Ill.App.3d 893, 901 (1st Dist. 1991). The court found that the tax violated the uniformity provision of the Illinois Constitution because Northwestern University's Allen Center was designed and used primarily as a teaching facility, not a hotel. *Id.* It was after this decision that the Municipal Tax Compliance Act's definition of 'hotel' was

amended to include public institutions of higher education. However, neither Northwestern University nor ZZZ are public institutions of higher education.

(ii) The Illinois Hotel Operator's Tax Act

The Illinois Hotel Operator's Tax Act imposes a tax on entities in the business of renting or leasing rooms in a hotel. 35 ILCS 145/3. The Act defines a hotel as 'any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations.' *Id.* According to the Illinois Administrative Code, a college or other school is not subject to the tax on its receipts from renting rooms to its students for use as sleeping or housekeeping accommodations because this is not rental to the 'public.' 86 ILAC 480.101 (b)(4). Nevertheless, if the school rents rooms for such purposes to persons who are not enrolled with the school in courses of study for credit, such renting is not being done to students, but is being done to the 'public.' *Id.* (Also see Private Letter Ruling ST 92-0332 dated June 30, 1992). No distinction is made between public institutions of higher education and private institutions of higher education in the Act.

(iii) The AAA classes/courses

Persons who take the classes and courses enroll for the weekend or applicable time period at the AAA. They receive Certificates of Completion. While they are not the typical student with a four or five year 'course of study,' they can take classes that are not stand-alone, but instead compliment or add to each other and may be considered a 'course of study.' In addition, the Certificates they receive might equate 'credit' -similar to credits accumulated for short-course study for professional continuing education or other business reasons. ZZZ considers such persons students enrolled in a course of study, not the public at large. Therefore, ZZZ requests a private letter ruling determination that such persons are considered 'students,' and not the 'public,' pursuant to the Illinois Hotel Operator's Tax Act. Further, ZZZ would like a definitive ruling that it is not subject to the Illinois Hotel Operator's Tax Act or the Municipal Tax Compliance Act by reason of such students living for a short period in the campus dormitories.

2. Contracts, Licenses, Agreements Instruments or other Relevant Documents

Attached are brochures offering the courses and a sample certificate.

3. Tax Period at Issue

The tax period at issue is May - August, 2000 and all future years. (ZZZ has paid the Illinois Hotel Operators' Occupation Tax for the current summer in case the tax is applicable, and will seek a refund if a favorable private letter ruling is issued.) No audit or litigation is pending with the Illinois Department of Revenue.

4. Statement of No Prior Ruling

Upon information and belief, and to the best of its knowledge, the Illinois Department of Revenue has not previously ruled on the same or a similar issue for ZZZ or its predecessor, nor has ZZZ previously submitted this issue or a similar issue to the Illinois Department of Revenue.

5. Statement of Authorities

- (a) Illinois Municipal Tax Compliance Act, 65 ILCS 80/4(b);
- (b) Illinois Hotel Operator's Tax Act, 35 ILCS 145/3;
- (c) Illinois Administrative Code, 86 ILAC 480.101(b)(4);
- (d) *Northwestern University v. City of Evanston*, 221 Ill.App.3d 893, 901 (1st Dist. 1991); and
- (e) Illinois Department of Revenue Private Letter Ruling, ST 92-0332, dated June 30, 1992.

6. Statement of Contrary Authorities

None found.

7. Statement that no trade secret information is contained in this request

No trade secret information is contained in this request for a private letter ruling.

We would greatly appreciate the Legal Services Bureau providing guidance on whether a hotel-motel tax would be payable in the circumstances described above. Please feel free to contact me at ZZZ or our attorneys at the telephone number and address listed below, if you have any additional questions.

Thank you.

DEPARTMENT'S RESPONSE:

The Department does not administer the provisions of Section 8-3-14 of the Illinois Municipal Code that allows municipalities to impose taxes on persons engaged in the business of renting, leasing, or letting rooms in a hotel in those municipalities.ⁱ Further, the Department also does not administer or enforce the provisions of the Municipal Tax Compliance Act.ⁱⁱ The Department has no authority to provide you with a ruling concerning the application either of those Acts. This Private Letter Ruling is issued only in regards to AAA's liability under the Hotel Operator's Occupation Tax Act.ⁱⁱⁱ

Type of Organization

With one very limited exception, the type of person or entity renting from AAA will make no difference for determining whether AAA incurs Hotel Operator's Occupation Tax liability on its rentals of rooms or apartments. Other than rentals to certain diplomatic personnel, there is no exemption simply because the rentor is a tax exempt or nonprofit organization, such as a church, charity or school or even unit of government, including the U.S. Government. See the enclosed copy of 86 Ill. Adm. Code 480.101.

The reason is that the Hotel Operators' Occupation Tax is only imposed upon the hotel operator. No "use tax" is imposed upon the person renting the room. However, the hotel operator is authorized to collect a "reimbursement" from the person renting the room. The Hotel Operators' Occupation Tax Act authorizes hotel operators to charge this reimbursement, it does not require them to do so. Since there is no "use tax" that a person or organization may be exempt from, the status of the person or organization making the rental does not provide the hotel operator with any exemption from the tax.

Credit or program

Subsection (b)(4) of Section 480.101 of the Department's administrative rules regarding the Hotel Operators' Occupation Tax provide that:

"a college or other school is not subject to the tax on its receipts from renting rooms to its students for use as living quarters or for sleeping or housekeeping accommodations because this is not the renting of the rooms to the "public". Nevertheless, if the school rents rooms for such purposes to persons who are not enrolled with the school in courses of study for credit, such renting is not being done to students, but is being done to the "public", and the school incurs Hotel Operators' Occupation Tax liability on its rental receipts from this activity, if such lessees do not qualify as permanent residents." 86 Ill. Adm. Code 480.101.

Rentals of rooms or apartments to persons who are not currently enrolled with ZZZ in courses of study for credit are considered rentals to the public at large and are subject to Hotel Operator's Occupation Tax liability. The Department will consider persons to be "enrolled in courses of study for credit" with the University if those persons are attending classes or programs (such as seminars, conferences, or summer camps etc.) that are held by the University (not some other organization), and if some form of credit or other recognition of completion is granted by the University for completion of those classes or programs. The providing of lodging to those persons would not be considered rentals to the public. Rentals to organizations or individuals who are attending programs put on by an organization other than ZZZ would be considered rentals to the public and be subject to Hotel Operators' Occupation Tax liability.

Your request for the letter ruling specifically references the holding in Northwestern University v. City of Evanston.^{iv} That case concerned whether an amendment to the hotel-motel tax imposed by the City of Evanston was applicable to rentals of rooms by Northwestern University. The amendment imposed tax on facilities that were not open to the public but did provide lodging in structures of ten rooms or more for a fee. The Allen Center run by Northwestern University was the only facility that the amendment would currently apply to.

The City of Evanston alleged that the University allowed outside organizations to occasionally use the "sleeping rooms" at the Allen Center and therefore the University was the proper subject of a motel-hotel tax. The court held the tax invalid as it applied to the University because the University's facility was devoted primarily to educational purposes by furnishing lodging and food to students incidental to its programs. It was not persuasively shown, the court ruled, that the University was in the market and competing for the same clientele as hotels and motels. The City noted that the public used the facilities only about 3.2 percent of the time. This public use was referred to as rental "to outside organizations that lease classroom space in the Allen Center for programs taught by the organizations themselves."^v

The Department's enforcement of the Hotel Operators' Occupation Tax Act in relation to AAA's rentals is consistent with the court's rationale in the Northwestern University case. The Department recognizes that persons renting from AAA in conjunction with courses of study for credit is the furnishing of lodging incidental to ZZZ's educational programs and is not considered rentals to the public. These types of rentals are not in competition for the same clientele as hotels or motels. However, when rentals are made to persons or outside organizations in conjunction with programs that are put on by organizations other than ZZZ, these types of rentals are considered rentals to the public and are in competition for the same clientele as hotels and motels.

Method of payment

Hotel Operator's Occupation Tax liability is incurred on a taxable rental regardless of whether the charges are paid by one organization or are paid individually by each individual resident. If only a single charge is made for lodging, meals, and instruction activities, the proportionate amount of that charge for lodging should be recorded in AAA's books and records for determining the proper amount of Hotel Operator's Occupation Tax liability. If such an amount is not recorded in AAA's books and records and it is audited by the Department, the Department will use its best judgment and information to assign a value to the lodging component of the total charge. If AAA provides lodging free of charge, then no Hotel Operator's Occupation Tax liability is incurred on that lodging.

A university does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the university's premises, and which confines its selling to the students and employees of the university. If the dining facility is opened up for the use of other persons, all sales that are made at such facility are taxable. See 86 Ill. Adm. Code 130.2005(b)(4). In a university campus setting, this means that sales of meals in a closed dormitory cafeteria are exempt but all food sales in a student union type setting, including sales to students, are taxable. The regulatory provisions and the closed cafeteria concept have been in effect for many years and two purposes are served. The first purpose served by the closed cafeteria concept is to solve the practical impossibility that the Department would face when auditing an open facility in verifying that all of the sales claimed to be exempt were, in fact, made to students. The second purpose served by the closed cafeteria concept is the protection of retailers in competition with the school's open facility. That is, student union (open to the public) type selling competes with area food service establishments for student purchases as well as for purchases by the public.

Similar to the Hotel Operators' Occupation Tax analysis described above, the Department considers the sale of food to persons who are "enrolled in courses of study for credit" with the University to be sales of food to students. The taxability of those sales of food will depend on whether sales of food to the University's students would be subject to tax as described in the preceding paragraph. When the charge for the meals is included in the single charge for the instruction, meals, and lodging and the charges for the meals are subject to tax, the proportionate amount of that charge for the meals should be recorded in AAA's books and records for determining the proper amount of Retailers' Occupation Tax liability. If such an amount is not recorded in AAA's books and records and it is audited by the Department, the Department will use its best judgment and information to assign a value to the meal component of the total charge.

Residence hall rooms versus campus apartment units

The rental of residence hall rooms and campus apartment units would be treated in the same manner for purposes of Hotel Operator's Occupation Tax liability. As described above, if the rentals are to ZZZ students who are currently enrolled at the University, those rentals are not subject to Hotel Operator's Occupation Tax liability.

Your letter indicates that the apartments are owned by a private entity. The person or entity that incurs the Hotel Operator's Occupation Tax liability is the person or entity that is engaged in the business of renting those apartments. You have informed me that AAA is the entity that is leasing these apartments to the persons described in your letter. Since AAA is engaged in the business of renting those apartments, AAA incurs any Hotel Operator's Occupation Tax liability on those rentals even if another entity owned the apartments.

Permanent residents

The gross proceeds from rental receipts for rentals to "permanent residents" are excluded from Hotel Operator's Occupation Tax liability. See subsection (a)(3) of Section 480.101. "Permanent resident" is defined as any person who occupied or has the right to occupy any room or rooms, regardless of whether or not it is the same room or rooms, in a hotel for at least 30 consecutive days. See the enclosed copy of 86 Ill. Adm. Code 480.105.

The "person" renting the room or apartment may be an individual or an organization or other type of entity. See subsection (8) of Section 2 of the Hotel Operator's Occupation Tax Act.^{vi} When the "person" renting the room or apartment is a business or other entity, the use of the room or rooms by different persons, in the name of the business or other entity, does not destroy the permanent resident status of that business or other entity.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.

ⁱ 65 ILCS 5/8-3-14.

ⁱⁱ 65 ILCS 80/1 et seq.

ⁱⁱⁱ 35 ILCS 145/1 et seq.

^{iv} 221 Ill. App. 3d 893 (1st Dist. 1991).

^v 221 Ill. App. 3d at 901.

^{vi} 35 ILCS 145/2.